IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5548 OF 2007

Snyandedv Keshav Shelar ....Petitioner
V/s
Sachin Shivaji Shelar ....Respondent.

Mr.Vishwanath S. Talkute, Adv. For the petitioner.

Mr.Kumar V. Saste for respondent.

CORAM: A.P.DESHPANDE, J.
6/9/07

PC:

The present petitioner is original defendant in civil suit No.13/03. The suit was filed on 10.1.03 and after service of suit summons the petitioner put in his appearance by engaging a counsel. I am informed by the learned counsel for the petitioner that within a month the petitioner had filed appearance through an advocate. The petitioner did not file written statement despite expiry of more than 90 days from the date of receipt of suit summons and ultimately the trial Court by an order dated 18.9.03 directed the suit to proceed without written statement against the defendant. After passing of the said order in the year 2003 the petitioner did not take any steps for about three years and belatedly moved a cryptic application without support of an affidavit. In the application permission to file written statement is sought by assigning a reason that the petitioner had himself filed regular civil Suit No.182/02 and being aggrieved by an order passed by the trial Court at Ex.5 miscellaneous civil appeal was filed by the petitioner in the district Court at Satara vide Misc. Civil Appeal No.259/03. The reason for inability of the petitioner to file written statement as disclosed in the application is

that the case papers were with the advocate at Satara and hence written statement in the present suit could not be prepared in time which resulted in delay in filing of written statement. The learned counsel appearing for the respondent has pointed out the averments made in paras 2(c) and (d) of the writ petition which reveal that one and the same advocate by name Shri P.N.Shinde was conducting civil suit No.182/02 so also the present suit and the Misc. civil appeal before the district court and thus the reason assigned in the application that the written statement could not be prepared as the papers were with the advocate conducting appeal in the district Court at Satara is non-existent. The submission is that there is no justification for the petitioner in not filing the written statement for about three years from putting in appearance in the suit.

2. The trial Court has rejected the application having regard to the amended provision contained in Order VIII of Code of Civil Procedure. The learned counsel for the petitioner has strenuously urged that the present petitioner is an illiterate rustic villager who had completely depended on the counsel engaged by him and the counsel failed to take timely steps for preparing written statement and filing the same in the Court. It is also pointed out that the application for seeking permission to file written statement is cryptic and vague as it is signed and filed by the counsel. Learned counsel for the petitioner has also contended that it is settled position in law that the client ought not be made to suffer for the fault of an advocate. It is then submitted that the subject matter of the present suit and the suit filed by the present petitioner is the same plot of land admeasuring about 30 ars. The relief claimed by the petitioner in his suit is for declaration and injunction that the petitioner is owner of the property by virtue of sale of suit property by the vendor who at a later point of time had sold it to the present respondent.

Whereas the suit filed by the respondent is for redemption of mortgage. Learned counsel has submitted that as both the suits involve the same subject matter the trial Court should have permitted the petitioner to file written statement and ought to have tried both the suits simultaneously. Per contra, learned counsel for the respondent submits that the explanation for the delay is not only not sufficient to make out exceptional case for permitting filing of written statement belatedly but the explanation is false and falsity stands established from the averment made in para 2 of the sub-paras (c) and (d) of the writ petition. Perused the order passed by the trial Court. The same goes to take a possible view of the matter. The order does not suffer from any patent illegality. In the present case the delay is of almost three years and the reason assigned has been found to be not sufficient. Hence no interference with the impugned order is called for. Writ petition is summarily dismissed.

6.9.07